

IN RE: PETITIONS FOR SPECIAL EXCEPTION * BEFORE THE
N/S of Harford Road, 115' SW * ZONING COMMISSIONER
of c/l of 5th Avenue *
9502 Harford Road * OF BALTIMORE COUNTY
9th Election District *
6th Councilmanic District * CASE # 91-173-X
Parkville Enterprises, Inc. *
Legal Owner *
Penn Advertising of Balto., Inc. *
Contract Purchaser(s) *
Petitioner *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a Petition for Special Exception for one (1) illuminated 12 ft. by 25 ft. advertising sign, as more particularly described on Petitioner's Exhibit No. 1.

The Petitioner, Penn Advertising of Baltimore, Inc., was represented by Stuart R. Berger, Esquire. Appearing on behalf of the Petition was Barry Friedman and Wayne Kraus, President, Parkville Enterprises, Inc., Legal Owner. There were no Protestants.

Testimony indicated that the subject property located at the corner of Fifth Avenue and Harford Road consists of .5 acres +/-, zoned B.L.-C.S.2, B.L. and D.R. 5.5 and is currently improved with a one story brick and concrete block building which is used as a florist. Testimony also indicated that the proposed outdoor advertising sign will be located on the parking lot, as shown on Petitioner's Exhibit No. 1.

Mr. Wayne Kraus testified that he did not believe that the outdoor advertising sign would pose any problems for the users of the parking lot or the florist. Mr. Kraus also testified that, based on his professional experience, it was his opinion that the business would not cause any adverse impact and would not create traffic congestion over and above what already exists. He testified that the conditions delineated in Section 502.1 (B.C.Z.R.) will be satisfied.

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Date 1/9/91
By M. H. Hines

Mr. Barry Friedman testified that, in his opinion, the proposed use at the subject property would not be detrimental to the health, safety, and general welfare of the community, and that the conditions delineated in Section 502.1 of the B.C.Z.R. will be satisfied.

The Department of Planning and Zoning, in a comment dated December 12, 1990, attached hereto and incorporated by reference to this opinion, indicates that the proposed outdoor advertising sign should be denied.

It is clear that the B.C.Z.R. permits the use proposed in a B.L. zone by special exception. It is equally clear that the proposed use would not be detrimental to the primary uses in the vicinity. Therefore, it must be determined whether the conditions as delineated by Section 502.1 are satisfied by the Petitioner.

The Petitioner had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and requirements set forth in Section 502.1. In fact, the Petitioner has shown that the proposed use would be conducted without real detriment to the neighborhood and would not adversely affect the public interest. The facts and circumstances do not show that the proposed use at the particular location described by Petitioner's Exhibit 1 would have any adverse impact above and beyond that inherently associated with such a special exception use, irrespective of its location within the zone. *Schultz v. Pritts*, 432 A2d 1319 (1981).

The proposed use will not be detrimental to the health, safety or general welfare of the locality, nor tend to create congestion in roads, streets, or alleys therein, nor be inconsistent with the purposes of the

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Date 1/9/91
By M. H. Hines

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property's zoning classification, nor, in any other way, be inconsistent with the spirit and intent of the B.C.Z.R.

After reviewing all of the testimony and evidence presented, it appears that the special exception should be granted, with certain restrictions as more fully described below.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 9th day of January 1991 that the Special Exception for one (1) illuminated 12 ft. by 25 ft. advertising sign is hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the foregoing relief:

1. The Petitioner may apply for its building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at its own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. The Petitioner shall obtain approval of the State Highway Administration for the proposed outdoor advertising sign prior to the issuance of any building permits for the requested sign.
3. The Petitioner shall submit to the Zoning Commissioner's office by no later than February 15, 1991 a new site plan prepared by a registered professional engineer and/or land surveyor, which clearly identifies all buildings, their size and area dimensions, their exact location on the subject property, their distances from all property lines, and any other information as may be required to be a certified site plan. The new plan shall also show all existing parking and the precise location of the proposed outdoor advertising sign on the parking lot, with proper front

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Date 1/9/91
By M. H. Hines

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foot averaging information clearly establishing that the outdoor advertising sign is not too close to Harford Road.

4. Upon request and reasonable notice, the Petitioner shall permit a representative of the Zoning Enforcement Division to make an inspection of the subject property to insure compliance with this Order.

J. Robert Hines
J. ROBERT HINES
Zoning Commissioner for
Baltimore County

JRH:mmm
cc: Peoples Counsel

ORDER RECEIVED FOR FILING
Date 1/9/91
By M. H. Hines

-4-

PETITION FOR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: 91-173-X

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Law and Zoning Regulations of Baltimore County, to use the

herein described property for One (1) illuminated 12' x 25' advertising sign

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Special Exception advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser: Penn Advertising of Baltimore, Inc. (Type or Print Name)
Signature: *Stuart R. Berger*
Address: 3001 Remington Avenue
City and State: Baltimore, Maryland 21211
Attorney for Petitioner: Stuart R. Berger esq. (Type or Print Name)
Signature: *Stuart R. Berger*
Address: 36 South Charles Street
City and State: Baltimore, Maryland 21201
Attorney's Telephone No.: (301) 332-8552

Legal Owner(s): Parkville Enterprises, Inc. (Type or Print Name)
Signature: *Wayne Kraus*
Address: 7607 Harford Road
City and State: Baltimore, Maryland 21234
Name, address and phone number of legal owner, contract purchaser or representative to be contacted
Name: Wayne Kraus
Address: 7607 Harford Road
City and State: Baltimore, Maryland 21234
Phone No.: 256-1567

ORDERED By The Zoning Commissioner of Baltimore County, this 9th day of January 1991, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commission of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 27th day of December 1990, at 9:30 o'clock A.M.

FILED BY JLL ON 9/4/90
ANY TIME OR DAY
1 HR. HEARING TIME.
SEE HQ. NOTE.
S.C.O. No. 1

(over)

ORDER RECEIVED FOR FILING
Date 9/4/90
By J. Robert Hines

PROPERTY DESCRIPTION

Beginning at a point located on the north side of Harford Road (80' R/W), 115' South West of Fifth Avenue, (50' R/W), and 76.65' from the center line of Harford Road and thence running the following courses and distances:

1. North 50° 23' 00" West - 30'
2. North 39° 37' 00" East - 15'
3. South 50° 23' 00" East - 30'
4. South 39° 37' 00" West - 15'

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Account: R-001-6150
Number

Date 9/4/90

Item #101

SPECIAL EXCEPTION
FILING FEE \$175.00

KRAUS.

Check #1420

04A04#0085NCHRC
BA C010:42H09-04-90

\$175.00

Cashier Validation:

Please make checks payable to: Baltimore County

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Account: R-001-6150
Number

receipt
No 3381
3996

Date

9/11/90

H9100101

PUBLIC HEARING FEES QTY PRICE
050 -SPECIAL EXCEPTION 1 X \$175.00
TOTAL: \$175.00
LAST NAME OF OWNER: PARKVILLE ENTER.

See hand-written receipt
dated 9-4-90

Cashier Validation:

Please make checks payable to: Baltimore County

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 9th Date of Posting: 12/1/90
Posted for: Special Exception
Petitioner: Parkville Enterprises, Inc.
Location of property: N/S Harford Rd., 115' SW of 5th Ave.
9502 Harford Rd.
Location of Sign: Facing Harford Rd., 115' SW of 5th Ave.
on property of Parkville Enterprises, Inc.
Remarks: *M. H. Hines*
Posted by: *M. H. Hines* Date of return: 12/1/90
Number of Signs: 1

CERTIFICATE OF PUBLICATION

TOWSON, MD., 12-12, 1990

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 12-5, 1990

THE JEFFERSONIAN,

S. Zeke Orlean
Publisher

\$ 76.81

CERTIFICATE OF PUBLICATION

TOWSON, MD., 12-13, 1990

THIS IS TO CERTIFY, that the annexed advertisement was published in TOWSON TIMES, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 12-5, 1990

TOWSON TIMES,

S. Zeke Orlean
Publisher

\$ 76.81

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Account: R-001-6150
Number

No 3381
3896

Item No.

9/11/90

H9100101

PUBLIC HEARING FEES QTY PRICE
050 -SPECIAL EXCEPTION 1 X \$175.00
TOTAL: \$175.00
LAST NAME OF OWNER: PARKVILLE ENTER.

See hand-written receipt
date 1-4-90

Please make checks payable to: Baltimore County

receipt

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner

Penn Advertising of Baltimore, Inc.
3001 Eastington Avenue
Baltimore, Maryland 21211

Dennis F. Rasmussen
County Executive

RE:
Petition for Special Exception
CASE NUMBER: 91-173-X
N/S Harford Road, 115' SW centerline of 5th Avenue
(#9502 Harford Road)
9th Election District - 6th Councilmanic
Legal Owner: Parkville Enterprises, Inc.
Contract Purchaser: Penn Advertising of Baltimore, Inc.
HEARING: THURSDAY, DECEMBER 27, 1990 at 9:30 a.m.

Dear Petitioner(s):

Please be advised that \$101.81 is due for advertising and posting of the above captioned property. THIS FEE MUST BE PAID AND THE ZONING SIGN & POST SET(S) RETURNED ON THE DAY OF THE HEARING OR THE OTHER SHALL NOT BE ISSUED. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING.

Please make your check payable to Baltimore County, Maryland. Bring the check and the sign & post set(s) to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 115, Towson, Maryland 21204 (15) minutes before your hearing is scheduled to begin.

J. ROBERT HAINES
ZONING COMMISSIONER
BALTIMORE COUNTY, MARYLAND

JRB:gs
cc: Stuart R. Berger, Esq.

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

November 13, 1990

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County Executive will hold a public hearing on the property identified herein in Room 105 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland 21204 as follows:

Petition for Special Exception
CASE NUMBER: 91-173-X
N/S Harford Road, 115' SW centerline of 5th Avenue
(#9502 Harford Road)
9th Election District - 6th Councilmanic
Legal Owner: Parkville Enterprises, Inc.
Contract Purchaser: Penn Advertising of Baltimore, Inc.
HEARING: THURSDAY, DECEMBER 27, 1990 at 9:30 a.m.

Special Exception for one illuminated 12 ft. by 25 ft. advertising sign.

J. Robert Haines

J. ROBERT HAINES
Zoning Commissioner of
Baltimore County

cc: Parkville Enterprises, Inc.
Penn Advertising, Inc.
Stuart R. Berger, Esq.

111 West Chesapeake Avenue
Towson, MD 21204

887-3353

April 9, 1991

Donna T. Hayward, Real Estate Manager
Penn Advertising of Baltimore, Inc.
P. O. Box 4858
Baltimore, Md. 21211

RE: Review of a Revised Special
Exception Site Plan for Compliance
With Order Restrictions
Zoning Case #91-173-X
N/S Harford Road, 115' SW of
Center Line of 5th Avenue
9th Election District

Dear Ms. Hayward:

This letter is in response to your correspondence and site plan submitted for zoning review for compliance with restriction #3 of the Zoning Commissioner's Order in Zoning Case #91-173-X. Some necessary information for zoning site plan approval is lacking on the submitted boundary survey. Therefore, a zoning hearing checklist for non-residential properties along with copies of the Baltimore County Zoning Regulations is per Section 415.3 and .5 of the Baltimore County Zoning Regulations is enclosed for your reference. The required hearing checklist information is highlighted for your convenience. Once this information is included on a revised plan, please resubmit for zoning review. Be aware that the sign must not block the supporting parking spaces or up additional zoning variance hearing for deficient parking may be required.

If you have any questions, please do not hesitate to call me at 887-3353.

Very truly yours,

James E. Davis
Zoning Supervisor
By: John L. Lewis
Planner

JLL:jet
cc: File

Baltimore County
Fire Department
700 East Joppa Road, Suite 901
Towson, Maryland 21204-5500
(301) 887-4500

Paul H. Balchuk
Chief

OCTOBER 9, 1990

Dennis F. Rasmussen
County Executive

J. Robert Haines
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204

RE: Property Owner: PENN ADVERTISING OF BALTIMORE, INC.
Location: #9502 HARFORD ROAD
Item No.: 101 Zoning Agenda: OCTOBER 2, 1990

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: Capt. Kelly 10-9-90 Noted and Approved Captain W. Brady
Planning Group Fire Prevention Bureau
Special Inspection Division

JH/ER

Baltimore County
Department of Public Works
Bureau of Traffic Engineering
Courts Building, Suite 405
Towson, Maryland 21204
(301) 887-3554

October 3, 1990

Dennis F. Rasmussen
County Executive

Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for items number 73, 94, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, & 112.

Very truly yours,

Michael S. Flanigan
Traffic Engineer Associate II

MSF/jw

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OCT 9 1990

ZONING OFFICE

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE
SEPTEMBER 28, 1990

TO: J. ROBERT HAINES, ZONING COMMISSIONER, DEPARTMENT ZONING
FROM: CHARLES E. BURNHAM, PLANS REVIEW CHIEF, DEPARTMENT OF PERMITS & LICENSES CEB

SUBJECT: ZONING ITEM #: 101
PROPERTY OWNER: Legal Owner: Parkville Enterprises, Inc.
Contract Purchaser: Penn Advertising of Balto. Inc.
LOCATION: N/S Harford Road, 115' SW centerline of 5th Avenue
(#9502 Harford Road)
ELECTION DISTRICT: 9th
COUNCILMANIC DISTRICT: 6th

A REVIEW OF THE SITE PLAN FOR THE ABOVE ZONING ITEM INDICATES THE FOLLOWING:

- () PROPOSED SITE PLAN DOES, DOES NOT, COMPLY TO STATE CODE OF MARYLAND REGULATION 05.01.07, MARYLAND BUILDING CODE FOR THE HANDICAPPED.
- () PARKING LOCATION () RAMPS (degree slope)
- () NUMBER PARKING SPACES () CURB CUTS
- () BUILDING ACCESS () SIGNAGE
- () PLAN DOES, DOES NOT COMPLY TO SET BACKS FOR EXTERIOR FIRE SEPARATION DISTANCE OF ARTICLE 5 AND ARTICLE 9 OF THE CURRENT BALTIMORE COUNTY BUILDING CODE.
- () A BUILDING PERMIT IS REQUIRED BEFORE ANY CONSTRUCTION CAN BEGIN. SECTION 111.1 OF ARTICLE 1. CONSTRUCTION DRAWINGS MAY BE REQUIRED.
- () A CHANGE OF OCCUPANCY PERMIT IS REQUIRED TO CHANGE THE EXISTING USE OF THE STRUCTURE TO THE PROPOSED USE. SEE ARTICLE THREE AND ARTICLE ONE, SECTION 103.2 ALTERATIONS MAY BE NECESSARY BY CODE TO COMPLY TO NEW USE REQUIREMENTS.
- () STRUCTURE IS SUBJECT TO FLOOD PLAIN LIMITATIONS, SECTION 516.0 COUNCIL BILL #158-88 (BALTIMORE COUNTY BUILDING CODE).
- (x) OTHER - All signs shall comply to Article 29 and its amendments in County Council Bill #158-88.

PERMITS MAY BE APPLIED FOR @ ROOM 100, 111 WEST CHESAPEAKE AVENUE, TOWSON, MARYLAND 21204 - PHONE - 887-3900.

THIS REVIEW COVERS ONLY MAJOR ITEMS ASSOCIATED WITH THE SITE PLAN, A FULL REVIEW MAY BE CONDUCTED WHEN THE PERMIT APPLICATION AND PLANS ARE SUBMITTED.

APPLICABLE CODE: 1987 NATIONAL BUILDING CODES AS ADOPTED BY COUNCIL BILL #158-88.

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines
Zoning Commissioner
DATE: December 12, 1990

FROM: Pat Keller, Deputy Director
Office of Planning and Zoning

SUBJECT: Parkville Enterprises, Inc., Item No. 101

The Petitioner requests a Special Exception for an illuminated 12' x 25' advertising sign.

Staff believes the control of outdoor advertising signs is essential in protecting the health, safety and welfare of the citizens of Baltimore County. In certain locations, the unique scale and design of outdoor advertising signs clearly compromises public safety and traffic safety, since these signs are distracting. The very purpose of an outdoor advertising sign is to attract the attention of the operators of motor vehicles, so that a commercial message is noticed.

This office recognizes that high standards for signs enhance the aesthetic appearance of the community and the ability of the commercial sector to thrive in an attractive environment.

In many commercial areas it is difficult to locate commercial uses: not because of a general lack of signs, but because of excessive sign size which has been exacerbated by competitive waste. In many areas of the county, some business people increase signage in order to compete with each other for attention.

The Baltimore County Master Plan makes several references to the importance of controlling signage, specifically on Page 74, in the Improving design and development quality aspect of the plan, the following issue is identified:

"The sign regulations need to be completely updated and revised. The regulations should distinguish between new and existing signs, as well as public and private signage. Incentives for ... phasing out nonconforming uses should be evaluated. Compliance with adopted local community plans should also be considered."

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OCT 12 1990

Parkville Enterprises, Inc., Item No. 101
Page 2
December 12, 1990

On Page 116 of the Master Plan the following short-term action is called for in the Eastern Sector:

"Clear up signage to reduce clutter and to provide adequate directional signage."

The Applicant's site is located within a community conservation area and the residential community of Woodcroft. A detached, single-family dwelling is located immediately adjacent to the property under petition. Under the heading of Community Development, The Baltimore County Master Plan recognizes the importance of ensuring that existing communities continue to be desirable places to live. Moreover, the plan states:

"Commercial activities incompatible with local neighborhoods should be restricted in such areas [community conservation areas]."

Based upon the analysis conducted, staff recommends the Petitioner's request be denied.

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3211.

PK/JL/cmm

ITEM101/ZAC1

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Zoning Advisory Committee
DATE: October 3, 1990

FROM: Robert W. Bowling, P.E.

RE: Zoning Advisory Committee Meeting
for October 2, 1990

The Developers Engineering Division has reviewed the subject zoning items and we have no comments for Items 33 (revised), 73, 84, 89, 101, 102, 103, 104, 105, 106, 108, 110, 111 and 112.

Item 107 is subject to the previous County Review Group comments.

For Item 109, a County Review Group Meeting is required. Church Lane is to be improved as a 40-foot paving section on a 60-foot right-of-way.

Robert W. Bowling, P.E., Chief
Developers Engineering Division

RWB:s

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10/4



Maryland Department of Transportation
State Highway Administration

Richard H. Trainor
Secretary
Hal Kassoff
Administrator

OCT 10 1990
October 9, 1990
ZONING OFFICE

Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Parkville Enterprises
W/S Harford Road (Md. 147)
115 E. S/O Fifth Avenue
Balto. Co. Zoning

Dear Mr. Haines:

On October 4, 1990, I made an on-site inspection, and reviewed the plans submitted concerning the above subject. The Highway Beautification Section of the State Highway Administration has no jurisdiction over on-premise signs unless the sign presents a traffic hazard. This office does not have enough information at this time to determine if the sign can be approved or not due to the following:

A. A NOTE on the plans states: "Advertising copy message will be changed on an on-going basis." Should the messages pertain to advertising activities located on the premises, the sign would not require a State permit. However, should the messages include advertising activities not conducted on the premises, the sign would be considered off-premise, and would require a State permit, and the sign must also have the approval of the County Zoning Board.

B. We will also need to know if the sign is going to be a "commercial electronic variable message sign." (CEVMS) to ascertain if the lighting technology would cause a traffic hazard.

Should you have any questions concerning the above, feel free to call me at 333-1640.

Sincerely,

George T. Dawson, Chief
Highway Beautification Section

OTD:jsk
cc: Parkville Enterprises, Inc.
7607 Harford Road
Baltimore, Maryland 21234

My telephone number is (301) 333-1641

Teletypewriter for Impaired Hearing or Speech
383-7555 Baltimore Metro - 565-0451 D.C. Metro - 1-800-492-5062 Nationwide Toll Free
707 North Calvert St., Baltimore, Maryland 21203-0717



Maryland Department of Transportation
State Highway Administration

Richard H. Trainor
Secretary
Hal Kassoff
Administrator

October 1, 1990

Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Baltimore County
Parkville Enterprises
Zoning Meeting of 10-2-90
W/S Harford Road (MD 147)
115' South of Fifth Ave.
(Item #101)

Dear Mr. Haines:

After reviewing the submittal for a special exception for one illuminated 12 foot by 25 foot advertising sign, we have the following comment.

We have forwarded this plan to our Highway Beautification Section, c/o George Dawson (333-1642), for all comments relative to zoning.

If we can be of further assistance, please contact Larry Brocato at (301) 333-1350.

Very truly yours,

John Contestabile, Chief
Engineering Access Permits
Division

LB:maw

cc: Parkville Enterprises, Inc.
Mr. George Dawson (w-attachment)
Mr. J. Ogle

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OCT 4 1990
ZONING OFFICE

My telephone number is (301) 333-1350 (Fax #333-1041)

Teletypewriter for Impaired Hearing or Speech
383-7555 Baltimore Metro - 565-0451 D.C. Metro - 1-800-492-5062 Nationwide Toll Free
707 North Calvert St., Baltimore, Maryland 21203-0717

Penn Adv.

PENN ADVERTISING OF BALTIMORE, INC.

February 15, 1991

Baltimore County Zoning Office
111 W. Chesapeake Avenue
Towson, Maryland 21204
Attn: J. Robert Haines

Dear Mr. Haines:

Please find enclosed a new site plan prepared by a registered land surveyor for property location 9502 Harford Road, Baltimore, Maryland. The case which this site plan pertains to is case #91-173-X.

In review of the site plan, if you have any questions please feel free to contact me at 235-8820. Thank you for your consideration in this matter.

Sincerely,

Donna T. Hayward
Donna T. Hayward
Real Estate Manager

DTH/bit

enclosed

RECEIVED
FEB 15 1991
ZONING OFFICE

P.O. Box 4868, Baltimore, MD 21211 Shipping: 2930 Remington Ave., Baltimore MD 21211 (301) 235-8820

1 - 10' x 18' H.C. SIGN
ZONING CASE 91-173-X
REVISED 2-16-91 PARKING
BOUNDARY SURVEY
9502 HARFORD ROAD
6TH COUNCIL DISTRICT
2ND ELECTION DISTRICT
BALTIMORE COUNTY, MD.
APR ASSOCIATES, INC.
2351 Guilford Road • Baltimore, Maryland 21226 • (301) 444-4312
SCALE: 1"=30'
DATE: 3/7/90

Arnold Jablon
Zoning Administrator
111 West Chesapeake Avenue
Towson, Maryland 21204

Dear Mr. Jablon:

I am writing to you to file a complaint and request a special hearing on the matter of the billboard sign which was approved on January 9, 1991 in Zoning Case #91-173X. I believe the billboard is owned by Penn Advertising of Baltimore, Inc., P.O. Box 4868, Baltimore, Maryland 21211.

As a condition precedent to the special exception granted for the billboard sign, the order required that a site plan be submitted by February 15. The plan was required to include specific information. A final plan meeting the requirements of the order was not submitted until November 21, 1991. An early plan may have been submitted, but was rejected by your office on April 9, 1991 for failing to meet the requirements of the order.

Because of these irregularities I am hopeful that you will see fit to accept our petition for a hearing to determine whether the order granting the special exception remains valid, given Penn Advertising's failure to comply with the condition of the order and to consider whether the sign must be removed.

Thank you for your consideration in this matter.

Sincerely,

Kathleen E. Taylor, M.D.

KET/dly

cc: James Oliver, Esq.

RECEIVED
JUN 3 1992
ZONING OFFICE

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND
Nos. 1070 & 1071
September Term, 1989

PENN ADVERTISING OF
BALTIMORE, INC.

MAYOR AND CITY COUNCIL
OF BALTIMORE

Moylan,
Bell, Robert M.,
Cathell,

JJ.

PER CURIAM

Filed: February 16, 1990

Because the factual issues in the two appeals are similar (albeit not identical) and because the legal issues in the two appeals are precisely the same, we are consolidating the two appeals for purposes of this decision and opinion. The appellant in both cases is Penn Advertising of Baltimore, Inc. (Penn Advertising). The appellee in both cases is the Mayor and City Council of Baltimore. Both cases arose out of efforts by Penn Advertising to obtain approval from the Board of Municipal and Zoning Appeals (the Board) to erect a 12-foot-by-25-foot illuminated billboard, one at 6601 Harford Road in a B-2-2 Zoning District, and the other at 5300 Park Heights Avenue in a B-3-2 Zoning District.

After a hearing on November 7, 1988, the Board disapproved Penn Advertising's applications, finding that "with due consideration to the guidelines and standards set forth in Sections 11.0-5a and 11.0-5c of the Zoning Ordinance and to the reports of several City Departments as required by the Zoning Ordinance, the Board finds that the proposed use would menace and endanger the public health, security, general welfare and morals." Penn Advertising appealed both adverse decisions by the Board to the Circuit Court for Baltimore City. In that court, Judge Mary Arabian affirmed the Board in both instances, finding that the Board's decisions were supported by substantial evidence.

The single question before us on both appeals is whether there was substantial evidence to permit the findings by the Board that the erection of the billboards would endanger the

public health, security, safety, general welfare or morals within the areas adjacent to the proposed signs.

As we begin our analysis, several settled legal principles need to be stated by way of appropriate legal backdrop. A zoning ordinance is an exercise of the police power and will only be sanctioned, as a restriction upon a property owner's right to use his property, when it fits within a clearly stated and clearly appropriate purpose of the police power. In Maryland Advertising Company v. Mayor and City Council of Baltimore, 199 Md. 214 (1952), the Court of Appeals quoted with approval the Supreme Court in Nectow v. City of Cambridge, 277 U.S. 183, 48 S.Ct. 447, 448, 72 L.Ed. 842 and then observed in its own right, at 222-223:

"The governmental power to interfere by zoning regulations with the general rights of the land owner by restricting the character of his use, is not unlimited, and other questions aside, such restriction cannot be imposed if it does not bear a substantial relation to the public health, safety, morals, or general welfare." The action here, bearing no such relation, was arbitrary and invalid, and should be reversed. It was said in Kublietzky v. Zimnoch, 196 Md. 504, 508, 77 A.2d 14, 16: "Building on one's own land is still a property right, subject to all applicable provisions of law; it is not a grant of favor from some governmental authority."

In both cases now before us, the zoning districts involved permitted the erection of billboards as a conditional use. As a result, generalized objections to billboards, on esthetic or other grounds, are no longer material to the decision of the zoning board or of the circuit court or of this Court. The place to have made such objections was before the legislative body that promulgated the zoning regulation in the first instance. In

determining that the erection of a billboard would be a conditional use within a zoning district, the legislative body has already considered the general observations and resolved the issue against the objectors. What remains is the more limited issue of whether there are special and particular objections to the erection of a billboard at a particular spot above and beyond objections that would apply to billboards generally in that particular zoning district. In City of Baltimore v. Foster & Kleiser, 46 Md.App. 163 (1980), we adopted as the opinion of this Court the written opinion of Judge Wilner, sitting in the Baltimore City Court. The observation there made, at 171, is appropriate here:

"This Court is not insensitive to the commendable efforts of the City Government to make the downtown and midtown areas of the City a pleasant place to live, work, and recreate. Nor does it ignore or belittle the concerns of those participating in that effort over a proliferation of billboards that, to them, are unsightly. But the Court is not the policy-making arm of the City Government; its function is to interpret and apply the law correctly and to make certain that the other instruments of government do likewise.

The City Council, by permitting billboards as a conditional use, has legislatively determined that, as a general rule, they do not menace or endanger the public health, safety, general welfare, or morals within the area of their permitted use. The Board has a limited amount of discretion to deny the use if there is substantial evidence to show that, notwithstanding the underlying legislative conclusion, a particular structure would, in fact, have such an effect."

With respect to the Harford Road sign, four witnesses appeared before the Board to object to the erection of the

billboard. One of them, Stuart Glascock, objected that the billboard was "going to cover my entire building." That objection, as well as one of the objections by William Pierson, to the effect that the erection of the billboard would block the natural light to the window in a stairwell of his building, are doctrinally indistinguishable from objections found to be inadequate in Maryland Advertising Co. v. Mayor and City Council of Baltimore, *supra*. In that case, the Board had denied an application for the erection of two large advertising signs upon the complaint of a neighbor who objected that he "would have his building sandwiched in between two large advertising signs" and that his property would be "completely obscured except for the people who stand directly in front of it." In reversing the decision of the Board, the Court of Appeals pointed out, at 199 Md. 220, that the erection of a building upon the lot, a clearly permissible use, would have precisely the same effect:

"The finding of the court was plainly that because of the advertising signs on both sides of the property near the street, the Cannors Corporation building would be completely obscured except for the people who stand directly in front of the building. The answer seems to be that buildings on these two vacant lots, within zoning regulations, would have the same effect. It could hardly be argued that such buildings could not be constructed because the Cannors Corporation building could not be seen except by the people who stand directly in front of it."

Kurt Voker of the Department of Housing and Community Development testified that the site was within a commercial revitalization zone and that the erection of a billboard would be incompatible with the efforts to get the smaller merchants in the

area to limit the size of their own signs because of a general concern with sign "clutter." This objection, we hold, would be a generalized objection throughout the commercial revitalization zone referred to by Mr. Voker. Were billboards to be deemed incompatible with commercial revitalization, the legislative act of zoning itself could easily have exempted the commercial revitalization area from the zoning district which permitted billboards as a conditional use.

William Pierson, in addition to his complaint already referred to, made the same argument that was made by Kurt Voker with respect to the efforts being made by local merchants to reduce sign clutter in the area. Mr. Pierson also offered the opinion that the billboard would distract motorists and could potentially cause traffic accidents. The objection to sign clutter generally is an objection based largely on esthetic grounds. That is neither a purpose of the zoning ordinance in question nor a permitted exercise of the police power. Mayor and City Council of Baltimore v. Mano Swartz, 268 Md. 79, 86 (1973); *see also* Gilmore v. Mayor and City Council of Baltimore, 205 Md. 557, 560-561 (1954). With respect to the argument about the sign being a distraction and a traffic hazard, we note that the Board had before it a traffic safety report from the Maryland State Police that indicated that no traffic accidents could be attributed to outdoor advertising or billboards in the preceding year. Both the Department of Transit and Traffic and the Fire Department wrote letters indicating that those departments had no objection to the erection of the billboard. With respect to a

billboard being a distraction in the abstract, Judge Wilner's observation, quoted with approval in City of Baltimore v. Foster & Kleiser, *supra*, at 46 Md.App. 169, is appropriate:

"That a sign will be visible is hardly a reason to ban it; visibility, indeed, is the whole purpose of the sign."

The objection of Richard Riha, who testified, and letters from councilmen and from representatives of various neighborhood associations all reiterated the general objection to sign clutter and its possibly adverse effect on small businesses in the area. Once again, we feel that these are generalized objections to billboards generally throughout the zoning district and were appropriately objections that should have been addressed to the legislative branch and not the judicial branch. We feel as did the Court of Appeals in Gilmore v. Mayor and City Council, *supra*, when it observed, at 205 Md. 565:

"Whatever the merits of this argument, it is one which should be addressed to the Legislature or the Baltimore City Council in an effort to have the law changed.... The legislative branch of the government in allowing billboards to be erected in such areas, has said, in effect, that the likelihood that their presence will bring about the dire consequences foreseen by the appellant, is not great enough to forbid generally the use of property to accommodate them."

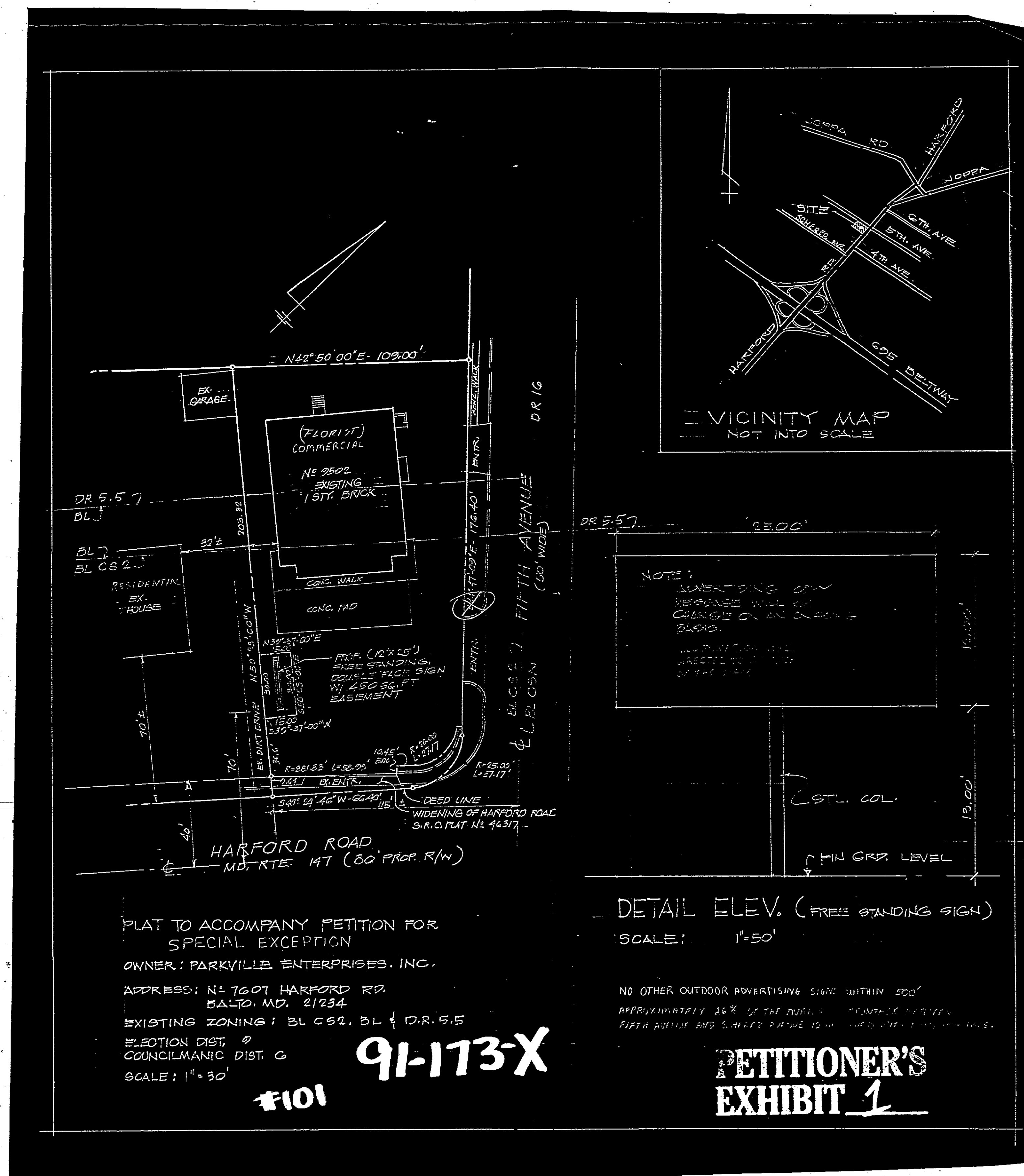
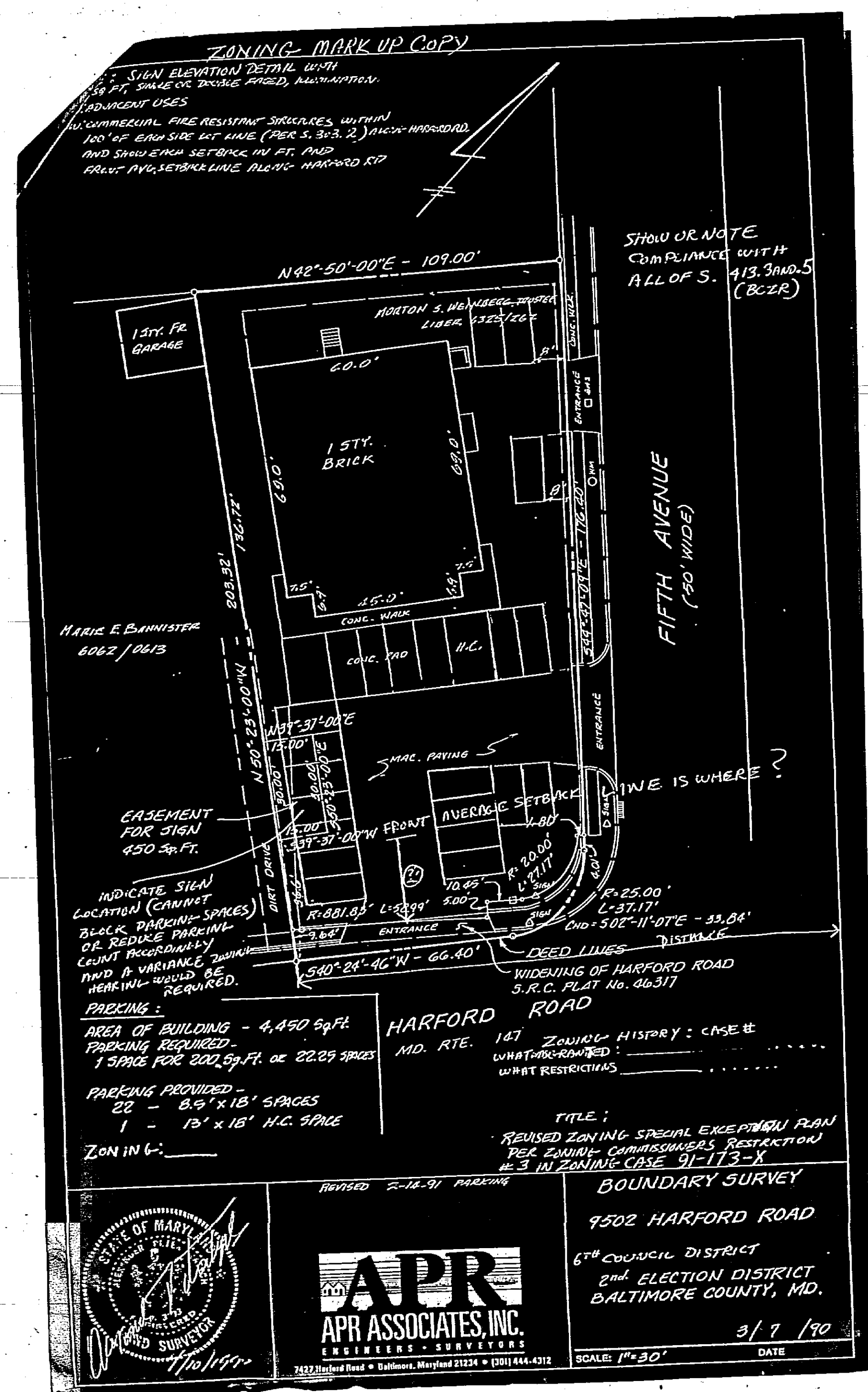
With respect to the sign on Park Heights Avenue, the objections, relied upon both by the Board and the circuit court, were even more general. There were letters from the Park Heights Community Corporation complaining that billboards caused "visual blight;" a letter from the Department of Planning which complained that the billboard was "inconsistent with the

objections of the Park Heights Avenue urban renewal plan;" and a letter from the Department of Housing and Community Development stating that the billboard would hinder their attempts to "guide the esthetic treatment of Park Heights Avenue." We have already discussed that concerns over "esthetic treatment" and "visual blight" are not matters touching upon "public health, security, safety, general welfare or morals" and are not an appropriate reason to oppose the granting of a conditional use. It is, moreover, obvious that all such complaints were generalized complaints about billboards generically and did not show any special adverse effect at the site of the proposed billboard above and beyond those adverse effects generally associated with billboards in that zone. The complaints clearly did not meet the required standard set out by Judge Davidson in Schultz v. Pritts, 291 Md. 1, 22-23 (1981):

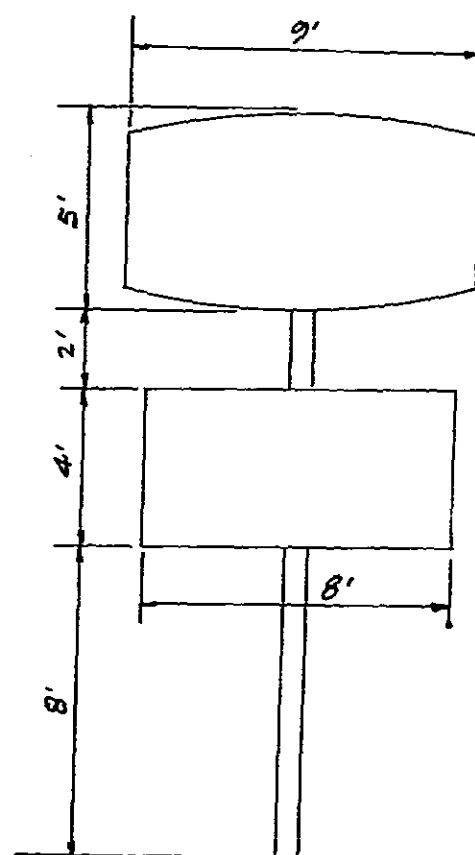
"We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone."

We hold that there was not substantial evidence before the Board to justify its denial of the two applications in issue. We hold, in turn, that the circuit court should not have affirmed those actions of the Board.

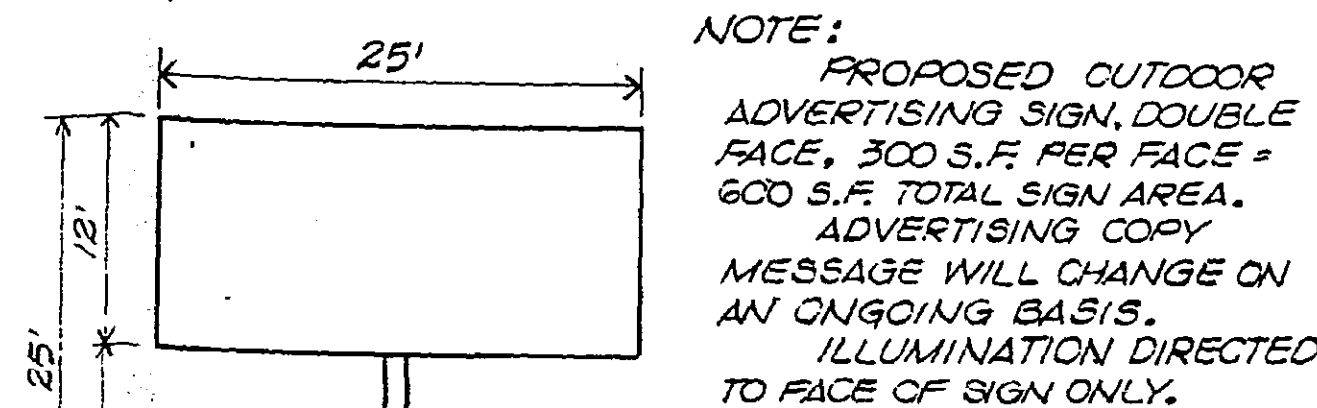
JUDGMENTS REVERSED;
CASE REMANDED FOR FURTHER
PROCEEDINGS; COSTS TO BE
PAID BY MAYOR AND CITY COUNCIL
OF BALTIMORE.



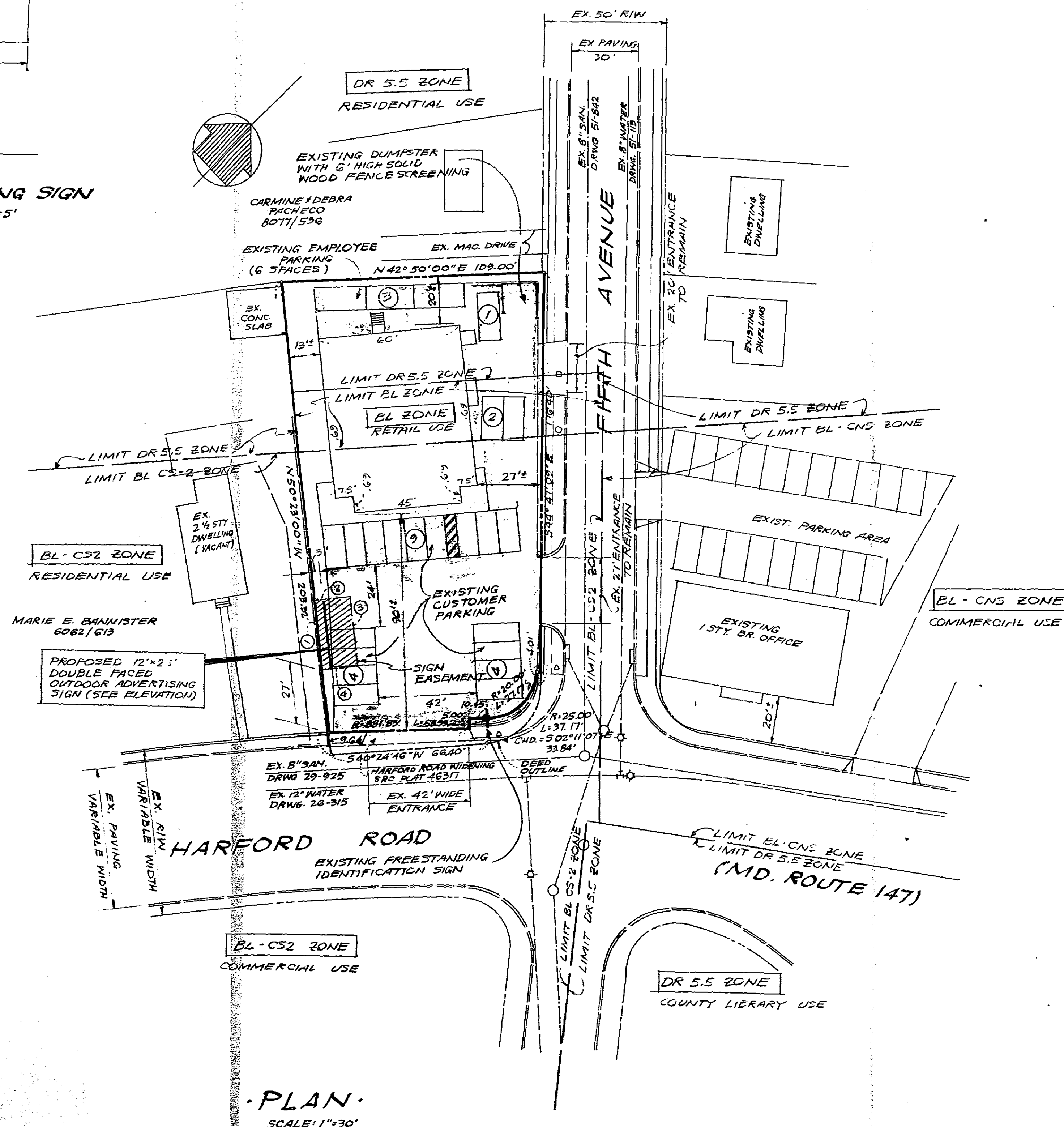
ELEVATION: EXISTING SIGN
SCALE: 1"=5'



ELEVATION
PROPOSED OUTDOOR ADVERTISING SIGN
SCALE: 1"=10'



- METES & BOUNDS OF SIGN EASEMENT
- ① N 50° 23' 00" W 30.00'
 - ② N 39° 37' 00" E 15.00'
 - ③ S 50° 23' 00" E 30.00'
 - ④ S 39° 37' 00" N 15.00'



PLAN
SCALE: 1"=30'

ZONING NOTES

- 1) PRIOR CASE NO. 91-173-X
 - A. PETITION FOR SPECIAL EXCEPTION TO PERMIT ONE (1) ILLUMINATED 12' x 25' ADVERTISING SIGN WAS GRANTED ON JANUARY 9, 1991.
 - B. SUBJECT TO THE FOLLOWING RESTRICTIONS:
 1. THE PETITIONER MAY APPLY FOR THEIR SIGN PERMIT AND BE GRANTED SAME UPON RECEIPT OF THIS ORDER; HOWEVER, PETITIONERS ARE HEREBY MADE AWARE THAT PROCEEDING AT THIS TIME IS AT THEIR OWN RISK UNTIL SUCH TIME AS THE 30-DAY APPELLATE PROCESS FROM THIS ORDER IS REVERSED. IF FOR WHATEVER REASON, THIS ORDER IS REVERSED, THE PETITIONERS WOULD BE REQUIRED TO RETURN, AND BE RESPONSIBLE FOR RETURNING, SAID PROPERTY TO ITS ORIGINAL CONDITION.
 2. THE PETITIONER SHALL OBTAIN APPROVAL OF THE STATE HIGHWAY ADMINISTRATION FOR THE PROPOSED OUTDOOR ADVERTISING SIGN PRIOR TO THE ISSUANCE OF ANY BUILDING PERMITS FOR THE REQUESTED SIGN.
 3. THE PETITIONER SHALL SUBMIT TO THE ZONING COMMISSIONER'S OFFICE BY NO LATER THAN FEBRUARY 15, 1991 A NEW SITE PLAN PREPARED BY A REGISTERED PROFESSIONAL ENGINEER AND/OR LAND SURVEYOR, WHICH CLEARLY IDENTIFIES ALL BUILDINGS, THEIR SIZE AND AREA DIMENSIONS, THEIR EXACT LOCATION ON THE SUBJECT PROPERTY, THEIR DISTANCES FROM ALL PROPERTY LINES, AND ANY OTHER INFORMATION AS MAY BE REQUIRED TO BE A CERTIFIED SITE PLAN. THE NEW PLAN SHALL ALSO SHOW ALL EXISTING PARKING AND THE PRECISE LOCATION OF THE PROPOSED OUTDOOR ADVERTISING SIGN ON THE PARKING LOT, WITH PROPER FRONT FOOT AVERAGING INFORMATION CLEARLY ESTABLISHING THAT THE OUTDOOR ADVERTISING SIGN IS NOT TOO CLOSE TO HARFORD ROAD.
 4. UPON REQUEST AND REASONABLE NOTICE, THE PETITIONER SHALL PERMIT A REPRESENTATIVE OF THE ZONING ENFORCEMENT DIVISION TO MAKE AN INSPECTION OF THE SUBJECT PROPERTY TO INSURE COMPLIANCE WITH THIS ORDER.

- 2) GROSS AREA = 0.608 Ac +/- (26479 s.f.)
NET AREA = 0.437 Ac +/- (19044 s.f.)
- 3) TITLE REFERENCE: MORTON S. WEINBERG, TRUSTEE 6325/262
- 4) EXISTING ZONING: BL - CS-2, BL, and DR 5.5
- 5) PROPOSED ZONING: BL - CS-2, BL, and DR 5.5 with SPECIAL EXCEPTION TO PERMIT AN OUTDOOR ILLUMINATED ADVERTISING SIGN.
- 6) EXISTING USE: RETAIL SALES (FLORIST)
- 7) PROPOSED USE: RETAIL SALES, AND OUTDOOR ADVERTISING SIGN
- 8) EXISTING BUILDING 4450 S.F. TO REMAIN.
- 9) FLOOR AREA RATIO = 4450/26479 = 0.1683 (MAX ALLOWED = 2.0)
- 10) OFF STREET PARKING

1. PARKING REQUIRED:
4450 s.f. RETAIL SALES @ 1 PER 200 s.f. = 22.25 = 23
2. TOTAL SPACES REQUIRED: 23
3. TOTAL SPACES PROVIDED (INCLUDED 1 HCP'D): 23
4. MINIMUM PARKING SPACE: 8 1/2' X 18'
5. ALL PAVED SURFACES ARE BITUMINOUS CONCRETE, OR CONCRETE

- 11) BUILDING SETBACK REQUIREMENTS (FOR PROPOSED SIGN)
 - FRONT: 10' MIN OR
- AVERAGE OF COMMERCIAL BUILDINGS WITHIN 100' OF EACH PROPERTY LINE (SECTION 303) = 15'
[20' + 10' (min.)] / 2 = 30/2 = 15' FROM EXISTING R/W
 - SIDE - NONE
 - REAR - NONE

- 12) SETBACKS PROVIDED (FOR PROPOSED SIGN ONLY)
 - A. FRONT = 27'
 - B. SIDE = 3' +
 - C. REAR = 128' ±

- 13) SECTION 413.3 NOTES (BCZR)
 - A. TOTAL SURFACE OF SIGN AREA - 600 s.f. (Double Faced)
 - B. SIGN IS LOCATED MORE THAN 100' FROM A DUAL LANE HIGHWAY
 - C. SIGN IS LOCATED OR BEYOND THE MINIMUM FRONT YARD REQUIREMENT FOR A COMMERCIAL BUILDING
 - D. SIGN IS LOCATED MORE THAN 100' FROM THE INTERSECTION OF A DUAL LANE HIGHWAY
 - E. SIGN IS LOCATED IS COMMERCIAL DEVELOPMENT
 - 7-11 @ 9410 HARFORD ROAD 181' FRONTAGE
 - VACANT @ 9500 HARFORD ROAD 110' FRONTAGE
 - FLORIST @ 9502 HARFORD ROAD 85.44' FRONTAGE
 - TOTAL FRONTAGE = 181 + 110 + 85.44 = 380.44
 - TOTAL COMMERCIAL = 181 + 89.44 = 270.44
 - PERCENT COMMERCIAL = 270.44/380.44 x 100 = 71%

14) SECTION 413.5 NOTES (BCZR)

- A. MAXIMUM SIGN HEIGHT IS 25'
- B. ILLUMINATION IS CONFINED TO THE SURFACE OF THE SIGN AND IS DIRECTED TO THE FACE OF THE SIGN ONLY.
- C. THE SIGN IS SO LOCATED AND ARRANGED AS TO AVOID GLARE AND REFLECTION ON TO ANY ADJACENT HIGHWAY, INTO THE PATH OF ONCOMING VEHICLES, OR ONTO ANY ADJACENT RESIDENTIAL PREMISES. LIGHTS WILL BE MOUNTED ON THE TOP OF THE SIGN, AND POINTED DIRECTLY TOWARDS THE SIGN. THE SIGN IS LOCATED 27 FEET AWAY FROM HARFORD ROAD, AND DOES NOT DIRECTLY FACE ONCOMING TRAFFIC. REFLECTION, AND GLARE, IF ANY, WILL NOT FALL ONTO THE HIGHWAY, NOR INTO THE PATH OF ONCOMING CARS. THE ADJACENT RESIDENCE ON ONE SIDE OF THE SIGN IS VACANT AND DILAPIDATED. IT IS ADVERTISED FOR SALE AS A COMMERCIAL PROPERTY. DUE TO THE COMMERCIAL NATURE OF HARFORD ROAD IN THIS AREA, THE EXPENSE OF THE PROPERTY AND NEEDED REPAIRS, IT WILL PROBABLY NEVER AGAIN BE USED AS A RESIDENCE. HENCE, GLARE AND REFLECTION INTO ADJACENT RESIDENTIAL PROPERTY WILL BE AVOIDED. HOWEVER, IF THE ADJACENT PROPERTY IS AGAIN UTILIZED FOR RESIDENTIAL PURPOSES A ZONING VARIANCE FROM SECTION 413.5.c.(BCZR), MUST BE REQUESTED BY THE SIGN OWNER.

THIS PLAN COMPLIES WITH RESTRICTION #3
AND IS THE LAST APPROVED PUBLIC HEARING.
PLAN IN ZONING CASE 91-173-X JDD. 11/21/91
PLAT TO ACCOMPANY
PETITION FOR SPECIAL EXCEPTION
PENN ADVERTISING, INC.
9502 HARFORD ROAD

PROPERTY OWNER: MORTON S. WEINBERG TRUSTEE
PARKVILLE ENTERPRISES, INC.
6325/262
ACCT # 09-23-157580

APPLICANT: PENN ADVERTISING OF BALTIMORE, INC.
3001 REMINGTON AVENUE
BALTIMORE, MARYLAND 21211

9TH ELECTION DISTRICT 6TH COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND SEPTEMBER 23, 1991 (REV. 11/20/91)

